IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11644 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAHIBEN C. PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11644 of 2002

MR KB PUJARA for Petitioner No. 1

MR.M.S. RAO, ASSISTANT GOVERNMENT PLEADER for Respondent No. 1-3

RULE SERVED for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 01/03/2004

ORAL JUDGEMENT

The petitioner has approached this Court with the prayer that it be held and declared that the petitioner is entitled to have corrected her birth date in the service record from the incorrect birth date, '01.06.1944' recorded therein to correct birth date 10.10.1945 as recorded in the Birth and Death Register. In the alternative, the birth date, '01.06.1945' as recorded in the School Leaving Certificate and to have all the consequential benefits of continuity in service and salary and allowances and retirement benefits on that basis.

2. The case of the petitioner is that the petitioner had joined the services as teacher in PTC College being Stree Adhyapan Mandir, Gandhi Ashram, Ahmedabad on 01.07.1973. Thereafter, she was appointed as Principal in another PTC College being Vanita Vishram Training College, Athwa Lines, Surat with effect from 21.02.1985, where she continued to serve till 31.10.2002. The case of the petitioner is that her date of birth according to the School Leaving Certificate, a copy of which is produced on the record of the case at page 10, Annexure 'A' (Colly.) issued by the school- Nai Talim Shala, Mogar, wherein she was admitted in Standard-I on 13.03.1952 is recorded as 01.06.1945. The petitioner has also produced a certificate issued by D.D. High School for Girls, Navsari wherein her date of birth is recorded as 01.06.1945 and has also produced a xerox copy of the duplicate School Leaving Certificate issued by Uttar Buniyadi Kanya Vidyalaya Vatsalyadham, Madhi depicting her date of birth to be 01.06.1945. It is the case of the petitioner that a mistake was committed by the Gujarat Secondary Education Board, Vadodara in recording her date of birth, which was recorded as, '01.06.1944' which formed the basis of the service record and that discrepancy she noticed only in the year 1995. She then made an application to the Gujarat Secondary Education Board, Vadodara which corrected the date of birth to be 01.06.1945 and an endorsement to that effect was made in the SSC Certificate of the petitioner. It is further the case of the petitioner that thereafter she made necessary correspondence with the Director of Primary Education, Gujarat State, Gandhinagar. One of the letters, dated 04.12.1997 is at Annexure 'D', pursuant to which the Director of Primary Education granted permission to make necessary correction in the service record by letter dated 05.10.1998 (Annexure 'F'). It is further the case of the petitioner that the petitioner being Principal in the College thought it fit to point out to the authorities that such correction can be made only after necessary permission is granted by the General

Administration Department of the Government of Gujarat. Therefore, the matter was taken up with the General Administration Department, who in turn refused to grant such permission and communicated its decision by letter dated 14.06.2002 addressed to the Director of Primary Education who in turn by letter dated 11.10.2002 informed the petitioner about the same. In a letter dated 14.06.2002 of the General Administration Department, it was mentioned that the matter pertains to correction of date of birth and reliance is placed on various documents, but no reference is made to the entry made in the Birth and Death Register and there is no clarification in this regard. When this fact was communicated to the petitioner, the petitioner approached the local authorities and obtained relevant extract of Birth and Death Register of Village Mogar, a copy of which is produced at Annexure 'L' (Colly.). But then before the same could be taken into consideration the petitioner was retired from service with effect from 31.10.2002.

3. Mr.K.B. Pujara, the learned advocate for the petitioner strenuously contended that this is a case wherein from the convincing record it is established that the date of birth of the petitioner is 10.10.1945 (from the Birth and Death Register of Village Mogar) and in any case date of birth of the petitioner was recorded as 01.06.1945 in the School Leaving Certificate issued by the school where the petitioner was admitted in Standard-I. Therefore, the authorities-the General Administration Department has committed an error in not granting sanction to correct the date of birth of the petitioner. He relied upon a judgement of this Court (Coram: M.S. Shah, J.) in Special Civil Application No.8722 of 2000 dated 14.09.2000, wherein in para 4 a reference is made to three other decisions of this Court, the relevant part reads as under:

> "The learned counsel for the petitioner has relied on the decisions of this Court in Diptidevi Patel Vs. State of Gujarat, 25 GLT 150 and Dakshaben J. Patel Vs. Director of Education, 28 GLT 244; Special Civil Application No.8846/92 decided on 15.7.1993 (Coram: Honourable Mr.Justice R.K. Abichandani) and in Special Civil Application No.3304/ 98 decided by me on 4.5.98 laying down that the date of birth as mentioned in the birth register is to be preferred to the birth date recorded in the School Leaving Certificate. The Govt. Resolution dated 11.11.1989 also contains the

rule to the aforesaid effect."

4. Mr.Pujara, the learned advocate also relied upon two other decisions of this Court in the matters of (i) Kantibhai Atmaram Patel Vs. State of Gujarat and another, 1996 (1) GLR 710, and (ii) 1983 GLH 428; and two decisions of the Honourable the Apex Court in the matters of (i) Cement Corporation of India Ltd. Vs. Raghbir Singh and another, AIR 2002 SC 509, and (ii) Director of Technical Education and another Vs. Smt. K. Sitadevi, AIR 1991 SC 308. The main contention of Mr.Pujara is that when there is a conclusive evidence in the form of extract from the Birth and Death Register, the authorities ought to have treated this case to be a case of clerical mistake and should have granted permission to correct the date of birth of the petitioner.

5. Mr.M.S. Rao, the learned Assistant Government Pleader emphatically submitted that this is a case wherein the petitioner can be said to have remained negligent about recording of her date of birth. He submitted that the petitioner joined the services on 01.07.1973. At that time on the basis of the documents produced by her, the date of birth was recorded as 1.6.1944, then for long 22 years that date of birth continued to be the date of birth of the petitioner. He submitted that a period of 22 years is not a short period for which a person could have remained unmindful of the date of birth recorded in the service record. The learned Assistant Government Pleader further submitted that it was only in 1995 that an application was made to Gujarat Secondary Education Board for correcting the date of birth on the basis of the School Leaving Certificate. He strenuously submitted that in the petition, the petitioner has not set out as to in what circumstances she noticed the discrepancy in the date of birth recorded in the School Leaving Certificate and the SSC Certificate. He submitted that it is also required to be noted that though the date of birth was corrected by the Gujarat Secondary Education Board on 13.12.1995, the petitioner did not take any immediate action to get her date of birth corrected in service record till 1997 because the only letter which is placed on record for perusal of this court is dated 04.12.1997, by which a request was made to the Director of Primary Education to accord sanction to the correction in date of birth. He submitted that there is no explanation even for this further delay of two years after the date of birth was corrected by the Gujarat Secondary Education Board.

5.1 Mr.Rao, the learned Assistant Government Pleader

emphatically submitted that the question of considering the request for correction in date of birth is a matter of daily routine in Government Departments. That is why the Government has laid down a policy so as to see that a uniform treatment is accorded to all such requests. He submitted that this policy is laid down by Government Circular No.BMH/ 1299/ 727-G dated 06.04.1999, wherein it is recorded that despite there being a clear Government policy on the subject the same is not strictly followed. Therefore, the Government is constrained to reiterate the policy once again for its strict compliance. The learned Assistant Government Pleader submitted that clause (2) of the said Circular is applicable to the facts of the present case. He submitted that two sets of circumstances are set out in clause (2), in which a request is required to be considered by the Government for correction of date of birth, viz. (i) when the discrepancy is noticed and a representation is made for correction in date of birth within five years from the date of entry in service, and (ii) when there is a clerical error in recording date of birth in the service book. He further submitted that in cases falling in second category the final authority is with the General Administration Department. Correction, if any, in the case of second category can be made only after the sanction from the Government (General Administration Department) is granted. He submitted that it is specifically provided in clause (2) of the aforesaid Circular that no representation be made to the Government for correction of date of birth in any other case.

5.2 Mr.Rao, the learned Assistant Government Pleader submitted that the phrase, 'clerical error in recording the date of birth in the service book' covers only such cases in which while recording a date of birth on the basis of the documents produced by a candidate a discrepancy creeps in, due to inadvertence of human agency. He submitted that in the present case date of birth of the petitioner is recorded on the basis of which contained the date of birth of the petitioner as 01.06.1944 and the same is correctly recorded in the service book. In such set of facts it cannot be said that therein any clerical error in recording the date of birth of the petitioner. Therefore, the petitioner could have requested for correction of date of birth, only under the first category, i.e. within five years from the date of entry in service. That being so there is no question of considering any request from the petitioner for correction in date of birth.

6. From the facts set out by the petitioner and the

submissions made by the learned advocate for the petitioner on one hand and the submissions made by the learned Assistant Government Pleader on the other, it is clear that the petitioner when entered in service on 01.07.1973, she produced SSC Certificate, on the basis of which an entry was made in the service record of the petitioner. There being no discrepancy in the date mentioned in certificate and the one which is recorded, no clerical mistake can be said to have crept in. The Court cannot be unmindful of the fact that the petitioner has not given any explanation worth the name in the petition to explain as to in what circumstances for 22 long years the petitioner did not notice this fact and as to how this fact came to her notice in the year 1995. Not only that the petitioner has also not placed on record any earlier letter than letter dated 04.12.1997 written to the Director of Primary Education for correction of date of birth, after date of birth was corrected in her SSC Certificate by the Gujarat Secondary Education Board on 13.12.1995. Thus, there is delay of about two years in approaching the Director of Primary Education for correction of date of birth, besides delay of 22 years in noticing the fact of discrepancy in date of birth recorded in SSC Certificate and School Leaving Certificate. Besides it is also required to be noted that after she was told that she has not based her case for correction of date of birth on the basis of Birth and Death Register, she obtained the relevant extract from the Birth and Death Register of Village Mogar and placed the same before the authorities. Interesting from that record a new date of birth has come on record, i.e. 10.10.1945. That being so, now there are two dates of birth; one 01.06.1945 according to the School Leaving Certificate and the other one 10.10.1945 according to the Birth and Death Register.

6.1 When there is a controversy regarding the correctness of date of birth, there are decisions of this Honourable Court to the effect that preference be given to the date of birth which is recorded in Birth and Death Register. But then in all cases, for all time, at any belated stage, a request for correction of date of birth cannot be accepted and entertained by the courts. In the present case in absence of any explanation for inaction on the part of the petitioner for long 22 years besides that also for two years after the date of birth was corrected in SSC Certificate, this Court considers it proper to decline to exercise its discretionary power in favour of the petitioner. The learned advocate for the petitioner submitted that petitioner is already retired on 31.10.2002, therefore, the Court may exercise

discretionary power in favour of the petitioner as it will not cause any impact on any other employee. In view of the grounds set out hereinabove, this fact is not sufficient to change the decision.

7. In the result the petition fails and is dismissed. No order as to cost. Direct service is permitted.

8. At this juncture, Mr.K.B. Pujara, the learned advocate for the petitioner submits that on account of pendency of this petition, the authorities have not made the payment of post retiral dues to the petitioner, which may be directed to be paid as expeditiously as possible, preferably within three months from the date of receipt of this order. The request is reasonable. The same is granted. The authorities are directed to see that the post retiral dues are paid to the petitioner within three months from the date the judgement is received. Mr.Rao, the learned Assistant Government Pleader shall communicate this order immediately even before this judgement is received so that the authorities start taking necessary action in the matter.

(Ravi R. Tripathi, J.)

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